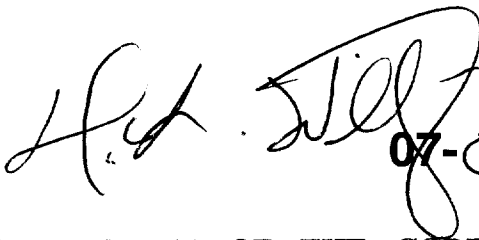


AN ORDINANCE BY  
COUNCILMEMBER H. LAMAR WILLIS



07-0 -1795

**AN ORDINANCE TO ESTABLISH CHAPTER 21 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA ENTITLED TRANSPORTATION OF HAZARDOUS MATERIALS; TO CREATE A NEW ARTICLE I TO BE ENTITLED "TERRORISM PREVENTION IN HAZARDOUS MATERIALS TRANSPORTATION ACT OF 2007"; TO CREATE A NEW DIVISION 1 TO BE ENTITLED "TERRORISM PREVENTION IN HAZARDOUS MATERIALS TRANSPORTATION ACT OF 2007" SO AS TO PROHIBIT LARGE SHIPMENTS OF CERTAIN EXTREMELY HAZARDOUS MATERIALS NEAR THE CITY OF ATLANTA IN AN EFFORT TO REDUCE THE RISK OF ATTACKS BY TERRORISTS; TO ALLOW FOR THE ISSUANCE OF PERMITS AUTHORIZING SUCH SHIPMENTS IN SPECIAL CASES; TO REQUIRE THE MAYOR TO ISSUE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS ACT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta has a right and responsibility to protect its citizens against the risks to life and property which are inherent in the transportation of hazardous materials in commerce; and

**WHEREAS**, a terrorist attack on a large-quantity hazardous material shipment in or near the City of Atlanta ("Atlanta") would have an expected impact of \$5 billion or more; and

**WHEREAS**, the threat of terrorism facing Atlanta residents and workers in the vicinity of the Capitol requires an urgent response that recognizes and addresses the unique status of this area in Georgia politics and history, and the risk of terrorism that results from this status; and

**WHEREAS**, shippers of hazardous materials do not need to route large quantities of hazardous materials through Atlanta in order to ship these chemicals to their destinations; and

**WHEREAS**, alternative routes would substantially decrease the aggregate risk posed by terrorist attacks; and

**WHEREAS**, requiring permits for hazardous shipments through Atlanta when an alternate route is not available would impose no significant burden on interstate commerce.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:**

**SECTION 1:** That Chapter 21 of the Code of Ordinances be established so as to create a new Article I entitled “Terrorism Prevention in Hazardous Materials Transportation Act of 2007.”

**DIVISION 1. GENERALLY**

**Sec. 21-1. Title.**

This Article shall be known and may be cited as the “Terrorism Prevention in Hazardous Materials Transportation Act of 2007.”

**Sec. 21-2. Scope.**

- (a) This article is intended to be the framework within which all transportation of hazardous materials in the city of Atlanta is defined herein, are approved and regulated.
- (b) It shall be unlawful for any rail network to transport extremely hazardous materials as defined herein without complying with the procedures set forth in this chapter.
- (c) Additional guidelines, policies, procedures, and permitting procedures and forms will be adopted administratively by the City of Atlanta Department of Public Works and enforced by the City of Atlanta.
- (d) The City of Atlanta will work in conjunction with the Georgia Department of Transportation to adequately and efficiently develop and maintain alternative routes for rail transit carrying the hazardous materials described in Section 21-4 hereinbelow.

**Sec. 21-3. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

1. *Emergency* means an unanticipated, temporary situation that threatens the immediate safety of individuals or property, as determined by the City of Atlanta and Georgia Department of Transportation.

2. *Hazardous Materials* means a material defined as a hazardous material according to Title 49, Code of Federal Regulations, Section 171.8.

3. *Person* means an individual or a commercial entity.

4. *Practical alternative route* means a route (1) which lies entirely outside the City of Atlanta and (2) whose use would not make shipment of the materials in question an unnecessary burden on commerce.

5. *Rail Network* means the railway transit system.

#### **Sec. 21-4. Prohibited Materials.**

Except in cases of emergency, it shall be illegal in the City of Atlanta, to do the following without a permit:

(a) transport any of the following:

(1) Explosives of Class 1, Division 1.1, or Class 1, Division 1.2, as designated in 49 CFR Section 173.2, in a quantity greater than 500 kg;

(2) Flammable gases of Class 2, Division 2.1, as designated in 49 CFR Section 173.2 in a quantity greater than 10,000 liters;

(3) Poisonous gases of Class 2, Division 2.3, as designated in 49 CFR Section 173.2, in a quantity greater than 500 liters, and belonging to Hazard Zones A or B as defined in 49 C.F.R. 173.116; and

(4) Poisonous materials, other than gases, of Class 6, Division 6.1, in a quantity greater than 1,000 kg., and belonging to Hazard Zones A or B as defined in 49 C.F.R. 173.133; or

(b) Operate a rail car which:

(1) is capable of containing explosives of Class 1, Division 1.1, or Class 1, Division 1.2, as designated in 49 CFR Section 173.2, in a quantity greater than 500 kg, and has exterior placarding or other markings indicating that it contain such materials;

- (2) is capable of containing flammable gases of Class 2, Division e.1, as designated in 49 CFR Section 173.2, in a quantity greater than 10,000 liters, and has exterior placarding or other markings indicating that it contains such materials;
- (3) is capable of containing flammable gasses of Class 2, Division e.1, as designated in 49 CFR Section 173.2, in a quantity greater than 500 liters, and belonging to Hazard Zones A or B as defined in 49 C.F.R. 173.116, and has exterior placarding or other markings indicating that it contains such materials; or
- (4) is capable of containing poisonous materials, other than gasses, of Class 6, Division 6.1, in a quantity greater than 1,000 kg., and belonging to Hazard Zones A or B as defined in 49 C.F.R 173.133, and has exterior placarding or other markings indicating that it contains such materials.

#### **Sec. 21-5. Permit Required.**

Should no practical alternative route be available, the City of Atlanta through the Department of Public Works may issue a permit for the transit of certain extremely hazardous materials as outlined in Section 21-4 herein. A permit shall require the adoption of a satisfactory security plan conforming to that of 49 CFR 172.802.

- (a) The City of Atlanta may collect fees for the permits in accordance with the rules issued under Section 21-7.
- (b) Permit fees collected pursuant to this Section shall not exceed the cost of implementing and enforcing this Act.
- (c) If collected, permit fees shall be used for terrorism prevention training in the City of Atlanta.

Said permit shall not be required should an emergency situation exists requiring transportation to or through the City. Permits may be obtained on a per-trip basis, or annually, pursuant to the regulations to be issued as in Section 21-7.

**Sec. 21-6. Penalties.**

(a) Any person who violates Section 21-4 or rules issued under Section 21-7 shall be subject to a civil penalty not to exceed:

- (1) \$10,000 for a first offense; or
- (2) \$25,000 for each subsequent offense.

(b) The fines assessed and collected under subsection (a) of this section shall be deposited into the General Fund of the City of Atlanta.

**Sec. 21-7. Rules**

The Mayor, in consultation with the City of Atlanta Department of Public Works, the Emergency Management Agency, the Emergency Medical Service Department and the Atlanta Police Department, shall issue rules to implement the provisions of this Act, including a schedule of permit fees to support analysis, communications to shippers and carriers and the enforcement program.

**Sec. 21-8. Fiscal Impact Statement.**

There will be no negative financial impact to the annual budget at the time of implementation of this Act or any subsequent annual budget.

**Sec. 21-9. Effective Date.**

This Act shall take effect following approval by the Mayor.

**SECTION 2:** That all ordinances in conflict be and the same are hereby repealed.

# ATLANTA TERRORISM PREVENTION IN HAZARDOUS MATERIALS OF RAIL TRANSPORTATION ORDINANCE

*A White Paper*  
*Councilmember H. Lamar Willis*

## **Background**

According to the Subcommittees on Highways & Transit and Railroads, Pipelines & Hazardous Materials – Transit & Rail Security (Wednesday, March 7, 2007),

By design, rail systems are open, have multiple access points, are hubs serving multiple carriers and in some cases, have no barriers so that they can move a large number of people or freight quickly...Transit and rail systems have open access with stops and transfer points and are thus difficult to protect...expensive infrastructure, economic importance and location make them attractive targets for terrorists because of the potential for mass casualties, economic damage and disruption.

Not enough has been done to provide security from terrorism through the usage of hazardous materials in transition on rail transportation for the citizens of Atlanta. Rail industry analysis shows that 1.7 million carloads of hazardous material are shipped along the nation's tracks each year. (Hall, Mimi, USA Today, Cities may Ban Trains with Chemicals, 6/22/06 citing Statement of Edward R. Hamberger President & Chief Executive Officer Association of American Railroads Before the Senate Commerce Committee Hearing on Railroad Security, October 20, 2005)<sup>1</sup> However, "Not a single chemical shipper or carrier has a national policy of re-routing even the most dangerous cargoes to avoid...target cities..." (Millar, Fred, The Elephant in the Living Room, The Journal of Commerce, [www.joc.com](http://www.joc.com), May 1, 2006)

Unfortunately, the US General Accounting Office indicated, "there is no agreed-upon national standard for assessing the adequacy of the rail security situation and no clear way to do such an assessment." (Millar, Fred, City Limits, Cargo Security International, [www.cargosecurityinternational.com](http://www.cargosecurityinternational.com), August 2004) According to Richard A. Falkenrath, former deputy homeland security adviser to President Bush, "Of all the various remaining civilian vulnerabilities, one stands alone as uniquely deadly, pervasive and susceptible to terrorist attack: industrial chemicals that are toxic when inhaled, such as chlorine, ammonia, phosgene, methyl bromide and hydrochloric and various other acids. These chemicals, several of which are identical to those used as weapons on the Western Front during World War I, are routinely shipped through and stored near population centers in vast quantities, in many cases with no security whatsoever." (Falkenrath, We Could Breathe Easier, Washingtonpost.com, March 29, 2005; Page A15) Clearly, "re-routing of

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<sup>1</sup> See also, Subcommittees on Highways & Transit and Railroads, Pipelines & Hazardous Materials – Transit & Rail Security (Wednesday, March 7, 2007).

hazmat shipments can virtually eliminate some significant terrorist risks.” (Millar, Cargo supra) Hence, it is up to municipal government to protect its citizens.

Atlanta has the ability to use its police powers to protect its citizens and further public safety. In fact, the President issued Executive Order 13416 addressing the issue of strengthening surface transportation security. In the Executive Order, “the President states that Federal, State and local governments and the private sector share responsibility for surface transportation security.” Subcommittees on Highways & Transit and Railroads, Pipelines & Hazardous Materials – Transit & Rail Security (Wednesday, March 7, 2007) In order to make rail transit in Atlanta more safe and secure, the Atlanta Terrorism Prevention in Hazardous Materials of Rail Transportation Ordinance is proposed for the reasons stated herein.

### **Harms**

“On January 6, 2005, two (2) freight trains collided in Graniteville, SC (approximately ten (10) miles northeast of Augusta, GA), releasing an estimated 11,500 gallons of chlorine gas, which caused nine (9) deaths and sent at least 529 persons seeking medical treatment for possible chlorine exposure.” (Public Health Consequences from Hazardous Substances Acutely Released During Rail Transit – South Carolina, 2005; Selected States, 1999—2004, MMWR Weekly, CDC, January 28, 2005 citing South Carolina Department of Health and Environmental Control [SCDHEC], unpublished data, 2005). The above referenced incident shows how dangerous hazardous materials in transit can be without any intent to cause such devastation; a well-planned terrorist attack using hazardous materials in transit has the potential to produce catastrophic damage including mass fatalities and economic instability.

Senator Joe Biden of Delaware calls the CSXT chemical cargoes traveling on rail “an open invitation to terrorists.” The New York Times editors (June 10, 2005). In fact, the Department of Homeland Security issued a notice of proposed rulemaking to vastly strengthen the security of the nation's rail systems in the highest threat urban areas on December 15, 2006. Unfortunately, the federal government has not been able to turn the notice of proposed rulemaking to approved legislation. According to former Homeland Security Secretary Michael Chertoff, “A toxic emission from an attack against a chemical facility or hazardous chemicals in transit is among the most serious risks facing America's highest threat areas”. (cited in Press Release: DHS Targets High Risk Hazardous Materials in Transit; December 15, 2006, Washington)

#### *A. Hazardous Materials Used as Weapons of Mass Destruction*

“A chlorine gas cloud released from just one tank car in a dense urban environment could kill 100,000 people in thirty (30) minutes, according to the U.S. Naval Research Labs. (Millar, Cargo supra.) Moreover, “The Chlorine Institute’s indispensable Pamphlet 74 shows the gas cloud can travel across a port city at a lethal level fully 14.8 miles from the point of release.” (Cargo Security International Article 2, June 23, 2006) There is no

doubt that hazardous materials that are oftentimes transported via rail system can easily be used as Weapons of mass destruction.

### *B. The Transport of Hazardous Materials by Rail*

“Chemical cargoes are clearly placarded as if for easy targeting – such placarding is essential for emergency responders. Moreover, graffiti on many tank cars advertise daily to all how utterly porous the transportation system is.” (Cargo Security International Article 2, June 23, 2006) These quotes illustrate the utter vulnerability of the rail system as it currently stands. Something must be done immediately to guard Atlanta’s citizens against the potential risk.

### **Significance to Atlanta**

Given the fact that Atlanta has a number of major highways that move through the heart of the city, the high citizenry population and the CDC headquarters, Atlanta is a target city. In fact, the Center for Terrorism Risk Management Policy estimates a high expected annual terrorism consequence<sup>2</sup> for Atlanta. In July 2006 a train broke down in Atlanta leaving 43 cars of high explosives and rockets unguarded and unmonitored for more than seven (7) hours. One single security guard watched the miles of rockets until a concerned citizen called the Atlanta Police Department and the Federal Bureau of Investigations. Unfortunately for the concerned citizen, the rail company, CSX threatened the man who reported the incident with trespassing. The possible danger this situation presented should be obvious. If high explosives and rockets were handed over to individuals with ill intentions for the citizens in Atlanta, the results would be devastating.

Clearly, the standstill time of the unattended freight cars transporting high explosives and rockets presented a significant but avoidable threat to the citizens of Atlanta. The City of Atlanta must do its part to ensure that such an event never reoccurs. In light of the lack of movement by the federal government, cities across the nation have taken action to protect themselves.

### **City Example for Solution**

The elected officials in Washington, DC passed an ordinance in 2003 (Council Bill 15-525) to require re-routing of the most dangerous cargoes that traveled through the city. The plan re-routed dangerous hazmat cargoes to a route 50 miles to the west of the city, traversing such non-target towns as Luray, Virginia and Hagerstown, Maryland. At the time the bill faced various legal challenges, but was finally enacted in 2005. The purpose as outlined in the bill is to “...prohibit large shipments of certain extremely hazardous materials near the United States Capitol in order to reduce the risk of attacks by terrorists; to allow for the issuance of permits authorizing such shipments in special cases; and to require the Mayor to issue regulations to implement the provisions of this Act.” (Terrorism Prevention in Hazardous Materials Transportation Act of 2005) Atlanta

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<sup>2</sup> Willis, Henry H., Morral, Andrew R., Kelly, Terrence K. and Medby, Jamison Jo; Estimating Terrorism Risk, RAND Corporation (2005).



shares the same desire as Washington, DC in protecting its citizens from terrorist attacks using hazardous materials.

### **Proposal**

It is proposed that the railways use a re-routing system whereby trains with dangerous hazardous materials as outlined within the proposed ordinance are directed to less populated, non-targeted cities nearby. Potential cities are Conyers, GA, McDonough, GA, Macon, GA, Tyrone, GA, Griffin, GA, and Elizabeth, GA. For shipments that are unable to be re-routed, a proposal is made to require permits of the rail network to travel through the City so that the City is aware of what chemicals and potential dangers are within its borders allowing the opportunity to effectively guard against possible risks. This plan is not an undue burden on commerce. Please see the proposed ordinance attached hereto as Exhibit "A".

### **Justification**

The proposed ordinance does not present an undue burden. As a matter of fact, "Rail re-routing has been done upon request during the past three (3) United States hosted Olympics in Los Angeles, Atlanta and Salt Lake City." (Millar, Fred, Ph.D, Critical Infrastructure Security Series: New Strategies to Protect America: Putting Rail Security on the Right Track, p. 14) The re-routing plan that was used in 1996 for the Olympics could be a starting point for the re-routing of hazardous materials.

The population of Atlanta is such that it would be more difficult to evacuate the city than it would be to evacuate surrounding, less populated cities. Additionally, certain neighboring cities or towns have expressed an interest in having more rail traffic flow through its borders. Already, "Trains containing specific amounts of the most hazardous materials are subject to special speed limits, passing restrictions, and inspections. Railroads increase track inspections, training and installations of wheel defect detectors on routes over which these trains operate." (Hamberger, 2005) Securing Atlanta's borders through this legislation would not be an undue burden on the rail industry.

### **Proposal in Practice**

The City of Atlanta would collaborate with the Georgia Department of Transportation to establish acceptable alternative routes. The ordinance allows for a permit to be issued upon the receipt of a fee if an alternative route is not feasible. A permit shall require the adoption of a satisfactory security plan that conforms to 49 CFR 172.802. The permit fees shall be collected by the City of Atlanta and shall be used for road repair. A permit shall not be required should an emergency situation exists requiring transportation to or through the City. Permits may be obtained on a per-trip basis, or annually, pursuant to the regulations to be issued as in the Ordinance.

## **Methodology**

In order to include a wide range of opinion, materials were reviewed from varied source areas including; best practice reviews by other cities, academic research, advocates and good government agency publications and a variety of reports and information from other jurisdictions.

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## **REFERENCES**

1. Cargo Security International Article 2, June 23, 2006
2. Hall, Mimi, USA Today, Cities may Ban Trains with Chemicals, 6/22/06 citing Statement of Edward R. Hamberger President & Chief Executive Officer Association of American Railroads Before the Senate Commerce Committee Hearing on Railroad Security, October 20, 2005
3. Millar, Fred, Ph.D, Critical Infrastructure Security Series: New Strategies to Protect America: Putting Rail Security on the Right Track, p. 14
4. Millar, Fred, The Elephant in the Living Room, The Journal of Commerce, [www.joc.com](http://www.joc.com), May 1, 2006
5. Public Health Consequences from Hazardous Substances Acutely Released During Rail Transit – South Carolina, 2005; Selected States, 1999—2004, MMWR Weekly, CDC, January 28, 2005 citing South Carolina Department of Health and Environmental Control [SCDHEC], unpublished data, 2005
6. Press Release: DHS Targets High Risk Hazardous Materials in Transit; December 15, 2006, Washington
7. Subcommittees on Highways & Transit and Railroads, Pipelines & Hazardous Materials – Transit & Rail Security (Wednesday, March 7, 2007),
8. Terrorism Prevention in Hazardous Materials Transportation Act of 2005
9. The New York Times editors (June 10, 2005)